IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 238 OF 2000

1. State of Goa,
   Rep. by Land
   Acquisition Officer,
   P.W.D. Cell,
   Altinho, Panaji-Goa.

2. Executive Engineer,
   Works Division VI,
   Public Works Department,
   Fatorda, Margao-Goa. ... Appellants.

versus

Luis Ozorio Saldanha,
since deceased, now
represented by his
legal heirs:

Mario Ozorio Saldanha,
since deceased, now
represented by his
legal representatives:

a) Mrs. Zita Saldanha,
   widow;

b) Mr. Cavin Saldanha,
   aged 29 years,
   unmarried;

c) Mr. Kenneth Saldanha,
   aged 22 years,
   unmarried;

All resident of Arossim,
Mormugao-Goa. ... Respondents.

Mr. H. R. Bharne, Government Advocate for the Appellants.

None for the Respondents.

CORAM : P. V. HARDAS, J.

DATED : 28TH NOVEMBER, 2003.

ORAL JUDGMENT

The Appellants being aggrieved by the Award passed by the learned IInd Additional District Judge, South Goa, Margao, dated 30th June, 2000, under Section 18 of the Land Acquisition Act, in Land Acquisition Case No.267 of 1989/I, has filed the present Appeal.

2. The facts as are necessary for the decision of this First Appeal are stated hereunder:-

The Government had acquired portions of land admeasuring 6 sq. metres from survey no.113/3 of village Arossim, for the purpose of construction of Arossim beach road. Notification No.22/15/87-RD dated 24th March, 1987, under Section 4 was published in the Official Gazette dated 2nd April, 1987. The Land Acquisition Officer had awarded compensation at the rate of Rs.25/- per sq. metre. The Respondents had accepted the compensation, awarded by the Land Acquisition Officer, under protest and hence, a reference came to be filed before the Reference Court.

3. Only one issue was framed and i.e. whether the Applicants therein proved that they are entitled to compensation at the rate of Rs.209/- per sq. metre as

on 2nd June, 1987. On the basis of the evidence led by the Respondents herein, the learned Reference Court answered the issue by holding that the Respondents herein had proved that the market rate of the acquired land was Rs.42/- per sq. metre as on the date of Notification.

4. The Respondents herein had examined A.W.1, Tina Maria Saldanha, A.W.2, Antonio Mascarenhas, A.W.4, Kenneth Saldanha and A.W.3, Surendra Nagvenkar. The Appellants herein did not adduce the evidence of any witnesses.

5. The learned Reference Court on the basis of the evidence which had been led regarding a finding of the evidence on record clearly indicated that the acquired land was situated close to the market area as well as close to Arossim beach. The learned Reference Court further held that the evidence on record further indicated that the acquired land is situated in a residential locality and all the amenities were available in the close vicinity of the land. In view of this, the learned Reference Court held that the acquired land was not only suitable for construction purposes but was also suitable for tourism development. The Respondents herein placed reliance on three Sale instances. The first one is dated 1st June, 1986 which

is at Exh.A-4. The second Sale instance is dated 21st January, 1987 which is at Exh.A-3 and the third Sale instance is dated 28th October, 1987 which is at Exh.A-2. The third Sale instance which is at Exh.A-2 is after the issuance of the Notification. The learned Reference Court, however, omitted to place reliance on the third Sale instance dated 28th October, 1987 at Exh.A-2 on the ground that the Respondents herein had omitted to examine either the vendor or the purchaser in respect of that Sale instance. The learned Reference Court, therefore, placed reliance on the two Sale instances at Exhs.A-4 and A-3. In respect of the Sale instance at Exh.A-4, land admeasuring 162 sq. metres was sold at the rate of Rs.100/- per sq. metre. The evidence of A.W.1, Tina Maria Saldanha, indicates that the acquired land is at a distance of about 500 metres from the land sold under the Sale Deed at Exh.A-4. The evidence of A.W.1, Tina Maria Saldanha, as well as the evidence of A.W.2, Antonio Mascarenhas, is to the effect that the land sold under the Sale Deed at Exh.A-4 is similar to the land acquired under the Notification. The learned Reference Court, therefore, relied upon the Sale instance at Exh.A-4.

6. Since, it had transpired in the evidence of the Respondents herein that a road has been constructed on the existing footpath, the learned Reference Court

found that the acquired land would not fetch the same price as the land sold under the Sale Deed at Exh.A-4 as it would be encumbered by pathways or accesses. The learned Reference Court, therefore, deducted an amount of 40% and the rate was brought down to Rs.60/- per sq. metre. The learned Reference Court also found that the area which was sold was a small plot and was sold as an access. In view of this, the learned Reference Court made a further deduction of 30% and arrived at the figure of Rs.42/- per sq. metre.

7. The second Sale instance dated 21st January, 1987 at Exh.A-3 was in respect of a land situated at a distance of 1 1/2 kms. from the acquired land. The rate was Rs.209/- in respect of the sale of the land under Sale Deed at Exh.A-3. The learned Trial Court relied on the Judgment in Land Acquisition Case No. 273/89, which also arose from the same Notification. The learned Reference Court also found that the land sold under Exh.A-2 was a developed land whereas the acquired land was an undeveloped land.

8. The learned Reference Court after considering the two Sale instances and deducting 40% and also deducting further 40% on account of existence of access in the acquired land determined the market price of the acquired land to be Rs.41.80 per sq. metre on the date

of Notification.

9. Mr. H. R. Bharne, learned Government Advocate appearing for the Appellants has placed reliance on a Judgment of the Apex Court in **Chimanlal Hargovinddas** v. **Special Land Acquisiton Officer** in AIR 1988 SC 1652. Reliance is placed particularly on head note (C) of the Authority which specifies certain minus factors. The minus factors noted by the Apex Court in the aforesaid Authority are:-

Minus factors

1. largeness of area.
2. situation in the interior at a distance from the road.
3. narrow strip of land with vary small frontage compared to depth.
4. lower level requiring the depressed portion to be filled up.
5. remoteness from developed locality.
6. some special disadvantageous factor which would deter a purchaser.

10. According to Mr. Bharne, learned Government Advocate appearing for the Appellants, the market value of the land as on the date of the Notification would be further reduced as the area acquired is a narrow strip

of land which was not fit for development and had no business potential. The submission of the learned Government Advocate appearing for the Appellants, is not well founded for the reason that the learned Reference Court while determining the market value of the land has taken into consideration the fact that the land acquired is near the residential area and it was not only suitable for development but was also suitable for tourism development. The learned Reference Court has deducted certain percentage from the amount of the sale instance in view of the fact that the acquired land was not developed and was encumbered by a footpath. According to me, the learned Reference Court has after considering these two factors correctly arrived at the figure to Rs.42/- per sq. metre as the market value of the land. That being the position, no interference is necessary in the First Appeal which is sans merit and deserves to be dismissed. The Respondents would be entitled to withdraw the amount deposited by the Appellants as per the Order of this Court.

11. First Appeal No.238 of 2000 is dismissed. In the circumstances, there shall be no order as to costs.

P. V. HARDAS, J.